

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVON L. SMITH,

Plaintiff,

VS.

NICHOLAS OHRMAN, *Sgt. CO2, et al.*,

Defendants.

No. 2:22-CV-1005

District Judge Arthur J. Schwab

Magistrate Judge Kenzia O.L. Taylor

MEMORANDUM ORDER

The Complaint in the above captioned case was filed on July 6, 2022, in the Middle District of Pennsylvania (Scranton) and the case was subsequently transferred to this District where it was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rules of Court 72.C and 72.D.

The Magistrate Judge's Report and Recommendation ([ECF No. 49](#)) filed on July 19, 2023, recommended that the Motion to Dismiss the Complaint ([ECF No. 41](#)) filed by the Defendants be granted in part and denied in part. Specifically, the Magistrate Judge recommended that Defendants' motion to dismiss be granted in part and that an Amended Complaint be filed. The Court entered an order affirming that Report and Recommendation and informed Plaintiff that if he chooses to file an amended complaint, it must include any and all claims that were not dismissed with prejudice that he wishes to pursue going forward. The amended complaint is a stand-alone document which supersedes any previously filed

Complaints, and Plaintiff must include all claims and defendants against whom he wishes to proceed in the amended complaint.

An amended complaint was filed on October 3, 2023, with three claims against two defendants. Defendants then filed a Motion for Judgment on the Pleadings as to Count Two. [ECF No. 62](#). On December 11, 2023, the instant Report and Recommendation was filed recommending that Count Two of the Amended Complaint be dismissed with prejudice. [ECF No. 66](#). Plaintiff's Objections were due December 28, 2023, and no objections have been filed. The case was reassigned to United States Magistrate Judge Kenzia O.L. Taylor on January 3, 2024, and shall proceed with case management/pretrial proceedings at this time.

After *de novo* review thereof,

IT IS HEREBY ORDERED that Defendants' Motion for Judgment on the Pleadings as to Count Two ([ECF No. 62](#)) is GRANTED, Count Two of the Amended Complaint is DISMISSED WITH PREJUDICE, and the Report and Recommendation thereon ([ECF No. 66](#)) is adopted as the Opinion of the Court.

SO ORDERED this 12th day of January, 2024.

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All Registered ECF Counsel and Parties

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